

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY B. SMITH,
Plaintiff

vs.

DAVID C. NICHOLSON, TRUSTEE
OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI,
TRUSTEE OF THE DOMINIC M.
SAWICKI NOMINEE TRUST,
AND CAROL ANN WHITNEY
AND GLENN WHITNEY,
Defendants

CIVIL ACTION NO.: 04 CV 10632 MEL

**DEFENDANTS, DAVID C. NICHOLSON, TRUSTEE OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI, TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE
TRUST, CAROL ANN WHITNEY AND GLENN WHITNEY'S
JOINT MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT
No. 04-CV-10632 MF1

MARY B. SMITH,)
)
Plaintiff,)
)
)
vs.)
)
)
DAVID C. NICHOLSON, TRUSTEE, et al,)
)
)
Defendants.)

DEPOSITION OF KENT L. SEITH, JR.,
taken in behalf of the defendant Dominic M.
Sawicki, pursuant to the applicable provisions
of the Massachusetts Rules of Civil Procedure,
before David J. Laplante, Registered
Professional Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at the
offices of HQ Global Workplace, 945 Concord
Street, Framingham, Massachusetts, on Friday,
October 14, 2005, commencing at 11:30 a.m.

LAPLANTE & ASSOCIATES, INC.
(508) 999-7499

1 Which I conflicted my previous testimony, and
2 I apologize for that, but.

3 Q. So, just to clarify things, you think
4 now that you parked on Olde Homestead Way, is
5 that correct, and that the driveway was Olde
6 Lantern Lane?

7 A. I think that's possible.

8 Q. That's possible. Fair enough.

9 A. If I could like go down there, I
10 could verify that in 30 seconds.

11 Q. Now, let's just refer to it as the
12 driveway.

13 A. This, Olde Lantern Lane?

14 Q. Olde Lantern Lane, we are going to be
15 referring to it as the driveway since that's
16 what you had originally called it.

17 Do you recall what the condition
18 of that driveway was?

19 A. Yes.

20 Q. Could you tell me about it?

21 A. Do I have to? I mean, is it -- okay.

22 It was paved at one point, I
23 believe, because it was rather broken up.
24 Maybe it stopped halfway down. It was in

1 pretty sad shape, I would say. You know, when
2 an old road breaks up and you've got those big
3 clumps of tar that could twist an ankle,
4 whatever. I am -- that's what I remember.

5 Q. Did you remember seeing that right
6 when you got onto the driveway? Was that
7 obvious right at the beginning of the driveway
8 as you started walking?

9 A. I don't recall. I know it got worse
10 about halfway through, right about where she
11 was. I can remember, I remember it being
12 decent. I think it was paved, being decent in
13 the beginning, and then getting steadily worse
14 down to the bottom where that landing area is
15 being just dirt.

16 Q. As you were walking, was it obvious
17 to you that it was getting worse? You could
18 look down and see that was, in your opinion,
19 getting worse?

20 A. Oh, yes. Oh, yes. I would say that
21 from the top, whatever the top was here, it
22 didn't look perfect. You could tell, I mean,
23 it didn't look, you could tell that it was
24 shady. You could tell that it was sandy and

1 turning into dirt and just not a good road
2 from the top.

3 Then it became really obvious as
4 you started walking, you get off the tar and
5 it's just --

6 Q. Having been there before, did you
7 know that you could drive down that driveway
8 to get to the Nicholsons' house?

9 A. Yes. Yes. Well, you know, it's a
10 funeral. We figured there was going to be a
11 ton of people. Like I said before, we didn't
12 want to do that. I figured it was an option.

13 Q. Okay. And as you said, there were no
14 cars parked on that driveway at the time you
15 were walking; is that correct?

16 A. I don't believe so.

17 Q. Okay. Now, I believe you said Mrs.
18 Smith was walking with your daughter Riley --

19 A. Yes.

20 Q. -- and Mrs. Dayton; is that correct?

21 A. Yes.

22 Q. Prior to, immediately prior to Mrs.
23 Smith's fall, do you recall where in the road
24 Mrs. Smith was in terms of whether she was to

1 Q. Could you tell me about that?

2 A. It starts off pretty, as I recall, it
3 starts off pretty level and then gradually
4 goes down. And then by the end, it's pretty
5 steep. And then you get to what I call a
6 little landing. I think they've got a boat
7 parked up there which has probably never seen
8 water in ten years.

9 And from there, it gets really
10 steep. I would say where she fell was just
11 starting to get steep. It was not steep yet.

12 Q. When --

13 A. Not very steep yet.

14 Q. Where you're saying it was just
15 starting to get very steep, do you mean the
16 first part of the driveway where it gets,
17 where you said -- strike that.

18 I think you just said the first
19 part of the driveway starts to become steep
20 and then you go down to the Nicholsons'
21 property and there is an another steep hill to
22 the house; is that correct?

23 A. Can I rephrase?

24 Q. Sure.